

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 19, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2015AP2002-CR
2015AP2003-CR**

**Cir. Ct. Nos. 2013CF515
2013CF516**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VINCENT MARTINEZ,

DEFENDANT-APPELLANT.

APPEALS from an order of the circuit court for Fond du Lac County: GARY R. SHARPE, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 PER CURIAM. In these consolidated cases, Vincent Martinez appeals from a nonfinal order granting his attorney's motion to withdraw as counsel. He argues that by granting the motion and knowing that another attorney

would not be appointed, the circuit court denied him his right to counsel. We disagree and affirm.

¶2 In October 2013, the State filed two complaints against Martinez for incidents involving his ex-girlfriend. In the first incident, Martinez was accused of strangulation and suffocation, substantial battery, and false imprisonment. In the second incident, Martinez was accused of stalking, misdemeanor battery, and disorderly conduct.

¶3 The State Public Defender (SPD) appointed Kristina Sanders-Brown to represent Martinez. The matters were scheduled for trial on March 3, 2014. Shortly before trial, Martinez wrote a letter to Sanders-Brown, demanding that she pursue various motions and strategies, as well as hire an expert witness to testify about the victim's injuries. He said that if she could not do those things, she should step down as his attorney. On February 27, 2014, Sanders-Brown moved to withdraw as counsel, citing a breakdown in communication with Martinez. She explained that Martinez no longer wanted her to represent him. She further explained that the SPD would appoint another attorney. Based upon these representations, the circuit court granted the motion.

¶4 On March 14, 2014, the SPD appointed Sara Kneever to represent Martinez. The matters were scheduled for trial on August 27, 2014. Two months before trial, Martinez wrote the circuit court a letter expressing his "concerns and grievances" about his attorney. One month later, Martinez wrote another letter requesting that a new attorney be appointed. Martinez also filed a pro se motion for relief. Eventually, on July 22, 2014, Kneever moved to withdraw as counsel, citing a breakdown in communication with Martinez. She noted that the SPD was

willing to appoint another attorney. After verifying this with the SPD, the circuit court granted the motion.

¶5 On August 12, 2014, the SPD appointed Jeffrey Haase to represent Martinez. The matters were scheduled for trial on April 20, 2015. Haase proceeded to file several motions on behalf of Martinez. Martinez, however, remained unhappy with Haase's performance. Two months before trial, Martinez wrote the circuit court a letter detailing his "concerns and complaints" about his cases and attorney. He wrote several more letters in the weeks before trial and ultimately requested that another attorney be appointed. A hearing was held on April 17, 2015.

¶6 At the April 17, 2015 hearing, the circuit court expressed concern with the timing of Martinez's request, noting that it came at the "11th-and-a-half hour right before a trial date." The court also expressed concern with the nature of the request, noting that Martinez was on his third attorney and could not "seem to get along with any of them." The court warned Martinez, "[Y]ou are sitting in the very undesirable position of having gone through three lawyers. You don't get another lawyer. The Public Defender won't appoint another lawyer for you." After a brief colloquy with Martinez, the court denied his request for another attorney and admonished him to cooperate with Haase. The court said:

[T]he Court is not going to allow Mr. Haase to withdraw because he is your last lawyer. You don't get another one. This matter is set for trial. It was set on Monday ... [but] your case will be bumped [by another matter] and it will be rescheduled in the file. But you better get along with your lawyer because you are stuck with him. Quit being so demanding. You can set forth the things that you think are important, but you have to ultimately respect his decision, and I don't want to hear about the disagreements that you have with your lawyer, and I don't want to receive anymore letters from you identifying the things that you didn't get because that's none of my business.

....

I can tell you that Mr. Haase is a very good lawyer, as was Sara Kneever and Attorney Sanders-Brown. These are not just kids out of school who have no experience. They have tried lots of cases, they have been successful, and they understand the law.

¶7 The circuit court concluded its remarks by reminding Martinez of the serious allegations he was facing and noting some of the difficulties of self-representation. It then reiterated the need to cooperate with Haase, as another attorney would not be appointed. The court stated:

[Y]ou are on trial in a criminal case. It's a serious case because there are allegations of serious misbehavior. You need to have a skilled lawyer represent you because if you think that you can do this on your own, appropriately cross-examine witnesses, get out proper subpoenas, and get them notified, make sure that proper evidence gets before the jury, you will fall flat on your face. So I want you to have a fair trial, and I want you to have a lawyer, and I can't get you a different lawyer, and I'm telling you that this lawyer is a very good lawyer.

....

[B]ecause I want you to have a—to have a fair trial and because you wouldn't get another lawyer if Mr. Haase is withdrawn, I think you can work together. He is a very easy guy to work with. But you can't be demanding. You'll have your opportunities to discuss your strategy and make your comments. But you are going to have to go along with his experience and his training to identify how this defense is going to progress.

¶8 Undeterred by the circuit court's warnings and admonitions to cooperate, Martinez continued to submit pro se filings voicing his displeasure with his attorney. For example, Martinez filed an affidavit regarding his attorney's alleged shortcomings and his disagreements with the way his attorney was handling the cases. He also filed a pro se motion alleging that his attorney had a conflict of interest. Another hearing was held on June 12, 2015.

¶9 At the June 12, 2015 hearing, Haase informed the circuit court that Martinez was not cooperating with him. He believed that they had reached an impasse saying, “Mr. Martinez will not accept any of my advice. He just does what he wants to do.” Accordingly, Haase asked the court to grant Martinez’s request for another attorney and allow him to withdraw as counsel. He assured the court that the SPD would make every effort to appoint another attorney.

¶10 The circuit court reluctantly agreed to allow Haase to withdraw as counsel from the cases. However, it noted Martinez’s history of difficult behavior towards his attorneys and warned him that the next attorney appointed would be his last. The court told Martinez:

I’m not going to make Mr. Haase represent you under these circumstances. I think you have made it so difficult for him to represent you that he feels that in a professional way he can’t represent you anymore. You did the same thing with the two prior attorneys. You continuously told them that they weren’t doing their job, that you weren’t getting the information, that they weren’t dancing to your tune, and you don’t get to call the dance. You get to make a decision whether you are going to enter a plea or not. You get to make a decision whether you are going to trial or not, but you don’t get to call the rest of the decisions that are made in a criminal defense case. You are just making it difficult and driving lawyers away from you.

....

I will allow Mr. Haase to withdraw because you have made it impossible for him to continue to represent you. He has assured me that the Public Defender’s office will appoint one more lawyer. This is it. If this lawyer doesn’t work out, then I will make the determination that you have done everything in your power to make it impossible for capable lawyers to represent you because you simply want to stall and make this matter not progress.

¶11 On June 15, 2015, the SPD appointed William Lennon to represent Martinez. The matters were scheduled for trial on February 9, 2016. Two months

after his appointment, Lennon filed a motion to withdraw as counsel, citing a “[f]undamental and unresolved dispute over role of defense counsel.” Another hearing was held on September 24, 2015.

¶12 At the September 24, 2015 hearing, Lennon told the circuit court that he could no longer represent Martinez. He said, “I think it’s fair to say that we just don’t see eye to eye in how to proceed in this matter concerning strategy and who to subpoena, who to question, how to question them.” Martinez denied that a dispute existed and explained that he just wanted his attorney to subpoena certain witnesses, which Lennon thought was a “terrible idea.” The court acknowledged that it had “been down this road before” with Martinez regarding his inability work with his attorney. Ultimately, the court granted Lennon’s motion to withdraw as counsel over Martinez’s objection. It indicated that no additional attorneys would be appointed for Martinez other than standby counsel. The court said:

Mr. Martinez, as far as I’m concerned, you have now waived your right to have an attorney represent you.

....

I deem you to have waived [the right to counsel] by the fact that you have driven four different lawyers away. So I’m not going to appoint another lawyer for you. I find that by your own actions and your refusal to follow the directives of the Court and work with your attorneys, instead you demand to control what your attorneys are doing....

....

I find that there is a basis to grant [Lennon’s] request. I have done so. Attorney [Anthony] Nehls is appointed by— at county expense as standby counsel.

¶13 The circuit court entered a written order granting Lennon’s motion to withdraw as counsel on September 24, 2015. Martinez subsequently petitioned

this court for leave to appeal. We granted Martinez’s petition and stayed circuit court proceedings pending disposition of these appeals.

¶14 On appeal, Martinez contends that the circuit court erred in granting Lennon’s motion to withdraw as counsel. He argues that by granting the motion and knowing that another attorney would not be appointed, the circuit court denied him his right to counsel.

¶15 The right to counsel is guaranteed by both the United States and Wisconsin Constitutions. *State v. Cummings*, 199 Wis. 2d 721, 747-48, 546 N.W.2d 406 (1996). Nevertheless, a defendant “may, by his or her conduct, forfeit the right to counsel.” *State v. Coleman*, 2002 WI App 100, ¶16, 253 Wis. 2d 693, 644 N.W.2d 283. This most often occurs in the case of manipulative or disruptive defendants. *Id.*

¶16 “The triggering event for forfeiture is when the court becomes convinced that the orderly and efficient progression of the case is being frustrated by the defendant’s repeated dissatisfaction with his or her successive attorneys.” *Id.*, ¶17 (internal quotations and brackets omitted). “However, forfeiture cannot occur simply because the effect of the defendant’s conduct is to frustrate the orderly and efficient progression of the case. The defendant must also have the purpose of causing that effect.” *Id.*, ¶18.

¶17 A court contemplating forfeiture should make sure the defendant understands the implications of his or her actions. *Id.*, ¶22. Thus, a court is encouraged to: (1) provide explicit warnings that, if the defendant persists in particular conduct, the court will find that the right to counsel has been forfeited; (2) engage in a colloquy to ensure the defendant is aware of the difficulties and dangers of self-representation; (3) provide a clear ruling when the court deems the

right to counsel to have been forfeited; and (4) make factual findings to support the court's ruling. *Id.*, ¶22. The court must also determine whether the defendant is competent to proceed without counsel. *Id.*, ¶34.

¶18 The circuit court's decision regarding a defendant's forfeiture of the right to counsel will be upheld unless the court erroneously exercises its discretion. *State v. McMorris*, 2007 WI App 231, ¶18, 306 Wis.2d 79, 742 N.W.2d 322. If the circuit court fails to make specific findings to support its discretionary decision, this court may affirm the decision if it is supported by facts in the record. *See State v. Walstad*, 119 Wis. 2d 483, 514-15, 351 N.W.2d 469 (1984). Whether a defendant was deprived of his or her right to counsel is a question of constitutional fact that we review independently. *Cummings*, 199 Wis. 2d at 748.

¶19 Here, the circuit court's comments make clear that it found that Martinez had forfeited his right to counsel.¹ Martinez disputes that this finding is supported by facts in the record. He submits that he lacked the intent to frustrate the orderly and efficient progress of his cases. Likewise, he complains that he received no warning that his conduct could lead to forfeiture.

¶20 We conclude that the record supports the circuit court's finding of forfeiture. As noted by the State, Martinez evinced an intent to frustrate the orderly and efficient progress of his cases by repeatedly and unreasonably expressing dissatisfaction with his attorneys and refusing to cooperate with them. Moreover, Martinez was aware of the implications of his actions by virtue of the

¹ Although the circuit court used the word "waived" at the September 24, 2015 hearing, the parties agree that it actually meant "forfeited."

circuit court's warnings at the hearings on April 17, 2015, and June 12, 2015. Again, the court explicitly told Martinez that he would not get another attorney. It noted some of the difficulties of self-representation and urged him to cooperate with counsel. Finally, it said that if the last appointed attorney did not work out, it would make the determination that Martinez had "done everything in [his] power to make it impossible for capable lawyers to represent [him] because [he] simply wanted to stall and make this matter not progress." Thus, the court's finding of forfeiture can hardly be viewed as a surprise.

¶21 We also conclude that the record supports the circuit court's implicit determination that Martinez was competent to represent himself. As noted, prior to his forfeiture, Martinez filed numerous letters and pro se motions with the court. Based upon these submissions, the court could reasonably conclude that Martinez was competent to represent himself.² Furthermore, the court did appoint standby counsel in the event that Martinez had questions or if his competency needed to be revisited.

¶22 For these reasons, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

² After his forfeiture, Martinez continued to file various pro se motions, further demonstrating his competence to represent himself.

